

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3443 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MOHAMMED HANIF YAKUBBHAI CHHIPA

Versus

RG GOHIL

Appearance:

Mr.H.R.Prajapati of M/s Thakkar Associates

Advocates for the Petitioner.

Mr.U.R.Bhatt, AGP for the Respondent .

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 01/08/96

ORAL JUDGEMENT

By way of the present petition under Article 226 of the Constitution of India, the petitioner Mohammed Hanif Yakubhai Chhipa has challenged the order dated 23-4-96 passed by the Sub-Divisional Magistrate, Bharuch Sub-Division, Bharuch under section 57 (c) of the Bombay Police Act exterring him for a period of two years from the districts of Bharuch, Surat and Baroda on the ground

that it is ex-facie illegal, against the principles of natural justice and violative of Article 21 of the Constitution of India.

As can be seen from the averments made in the petition, the petitioner is a resident of Bharuch and doing business of notified goods i.e. fabrics, cosmetics, cutlery goods and electronic items of foreign origin in the name and style of M/s Golden Star in the city of Bharuch since last five years. The petitioner has obtained necessary permission for storing and dealing in the notified goods from the office of the Superintendent of Customs (S.G.) , Bharuch.

The petitioner was served with a show cause notice issued under section 57 (c) of the Bombay Police Act issued by the Sub-Divisional Magistrate, Bharuch calling upon him to show cause as to why he should not be extened for a period of two years from the district of Bharuch and other adjoining districts of Surat and Baroda. In the said show cause notice the respondent has placed reliance on the four prohibition cases registered against the petitioner for the offences punishable under sections 66 (1)(b) and 85 (1) and (3) of the Bombay Prohibition Act, which are pending trial.

The petitioner replied to the said show cause notice on 4-1-1996. Thereafter the hearing of the case was adjourned from time to time for different reasons. However, to the surprise of the petitioner, he was served with the impugned order of externment dated 23-4-1996 extening him for a period of two years from the districts of Bharuch, Surat and Baroda.

The petitioner has made a grievance in the petition that the said order does not contain any reasons and that no reasonable opportunity of being heard was afforded to the petitioner before passing the order of externment.

Mr. Prajapati, learned Advocate , appearing for the petitioner has urged number of contentions. But it is not necessary to refer to and deal with all the contentions as this petition can be disposed of on the ground that the respondent has no authority in law to exercise the power under section 57 (c) of the Bombay Police Act as the petitioner has not been convicted for any of the offences mentioned in the said section. Mr. Prajapati therefore contended that since the show cause notice itself was issued without authority of law, the externment order passed in pursuance of ther said show

cause notice is bad in law and without jurisdiction. He, therefore, submitted that the show cause notice as well as the impugned order of externment are without jurisdiction and, therefore, the same are liable to be quashed and set aside.

Section 57 (c) of the Bombay Police act authorises the Commissioner, the District Magistrate or the Sub-Divisional Magistrate to remove any person, who has been convicted thrice within a period of three years under any of the provisions of the Bombay Prohibition Act of any of the offences mentioned in this section, outside the area within the local limits of his jurisdiction or such area and any district or districts, or any part thereof, contiguous thereto by such route and within such time and not allow him to enter or return to such area if he has reason to believe that he is likely again to engage himself in the commission of an offence similar to that for which he was convicted. It is not in dispute that the prohibition cases shown in the show cause notice are pending and the petitioner has not been convicted in any one of the said cases. In that view of the matter, the show cause notice and the impugned order suffer from total lack of jurisdiction on the part of the respondent and they deserve to be quashed and set aside and the petition is required to be allowed on this ground.

In the result, this petition is allowed. The notice dated 4-11-1995 at Annexure "C" to the petition and the impugned order dated 23-4-1996 at Annexure "E" to the petition are quashed and set aside. Rule is made absolute accordingly with no order as to costs.

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